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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,478	03/23/2001	Donna B. Dulong	CRNI.125945	5342
46169	7590	12/13/2007	EXAMINER	
SHOOK, HARDY & BACON L.L.P. Intellectual Property Department 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613			GILLIGAN, CHRISTOPHER L	
ART UNIT		PAPER NUMBER		3626
MAIL DATE		DELIVERY MODE		PAPER
12/13/2007				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/815,478	DULONG ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Luke Gilligan	3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 September 2007.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-51 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-51 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>8/7/2007</u> .	6) <input type="checkbox"/> Other: _____.

***Response to Amendment***

1. In the amendment filed 9/21/07, the following has occurred: claims 1, 18, and 35 have been amended. Now, claims 1-51 are presented for examination.

***Claim Objections***

2. Claim 1 is objected to because of the following informalities: It appears that in the final line of the fifth step, the amendment inadvertently references "the second medication." Based on the claims as amended, it appears that this phrase should recite "the selected medication" and the examiner will interpret it as such. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelson et al., U.S. Patent No. 6,671,563 in view of Lambert, U.S. Patent No. 6,529,892.

5. As per claim 1, As per claim 1, Engelson teaches a computer programmed method for providing one or more medication administration comments for preventing medication administration errors, wherein the one or more medication administration comments are provided at a place of administration of a medication in a hospital setting, the method comprising: accepting a medication administrator identification for a medication administrator (see column 13, lines 32-35); accepting a patient identification for a patient (see column 13,

lines 25-28); displaying a graphical user interface listing one or more medications scheduled for administration to the patient (see column 8, lines 57-60); accepting a user selection of one of the listed medications from the medication administrator, the selected medication corresponding with a medication to be administered to the patient by the medication administrator (see column 13, lines 28-32, since the patient's MAR displays a graphical listing of all scheduled medications, the selection of the particular medication, through the use of a bar code, constitutes a selection of one of the listed medications); providing a data store having compliance rules that include conditions and medication administration comments (see column 9, lines 13-24); determining if a condition for a compliance rule has been satisfied(see column 13, lines 49-54); and displaying at the place of administration of the medication in a hospital setting, on a display device, the one or more medication administration comments associated with the at least one compliance rule when the condition has been satisfied (see column 13, lines 54-60).

6. Engelson does not explicitly teach two or more compliance rules corresponding with the selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition and one or more second medication administration comments specific to the selected medication and the second condition. Lambert teaches two or more compliance rules corresponding with a selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition and one

or more second medication administration comments specific to the selected medication and the second condition (see column 3, lines 55 column 4, lines 9 and column 5, line 51 – column 6, line 8). In addition, Lambert contemplates this drug checking technique in the context of hospital drug administration (see column 1, lines 16-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to include this drug checking technique within the drug administration system of Engelson. One of ordinary skill in the art would have been motivated to include such a technique for the purpose of providing additional safety checks for the administration of medications not contemplated by Engelson (see column 4, lines 5-9 of Lambert).

7. As per claim 2, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the conditions is satisfied when a generic name for a medication matches the selected medication (see column 13, lines 49-54, since matching the name of the medication is one of the conditions, and both generic and brand name medications are routinely administered in a hospital environment, it is submitted that Engelson teaches this feature).

8. As per claim 3, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the conditions is satisfied when a brand name for a medication matches the selected medication (see column 13, lines 49-54, since matching the name of the medication is one of the conditions, and both generic and brand name medications are routinely administered in a hospital environment, it is submitted that Engelson teaches this feature).

9. As per claim 6, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the comment indicates additional verification of an aspect of the medication should be performed (see column 13, lines 54-65).

10. As per claim 13, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the comment indicates that the medication should be administered by a certain route (see column 13, lines 49-60).

11. Claims 18-20, 23, and 30 recite substantially similar system limitations to method claims 1-3, 6, and 13 and, as such, are rejected for similar reasons as given above.

12. Claims 35-37, 40, and 47 recite substantially similar apparatus limitations to method claims 1-3, 6, and 13 and, as such, are rejected for similar reasons as given above.

13. Claims 4-5, 7-12, and 14-17 recite various additional types of comments that can be displayed on the display device. Although Engelson teaches displaying comments (appropriate information) when a condition for a compliance rule (discrepancy check) has been satisfied, the reference does not explicitly disclose the particular comments recited claims 4-5, 7-12, and 14-14. However these differences are only found in the non-functional data defining the comment displayed on the display device. Data identifying the type of comment displayed is not functionally related to the steps recited in the claim. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *Cf. In re Gulack*,

703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Furthermore, in addition to the types of comments that are disclosed by Engelson, as described above, the various types of comments identified in claims 4-5, 7-12, and 14-17 are all old and well known in the art of medication administration.

15. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to display any data on the display device as shown in Engelson because such data does not functionally relate to the steps recited in the claim and merely labeling the data differently from that in the prior art would have been obvious matter of design choice. See *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

16. Claims 21-22, 24-29, and 31-34 recite substantially similar system limitations to method claims 4-5, 7-12, and 14-17 and, as such, are rejected for similar reasons as given above.
17. Claims 38-39, 41-46, and 48-51 recite substantially similar apparatus limitations to method claims 4-5, 7-12, and 14-17 and, as such, are rejected for similar reasons as given above.

### ***Response to Arguments***

18. In the remarks filed 9/21/07, Applicants present arguments against the combined teachings of Engelson and Hasey. These arguments have been fully considered but are now moot in view of the new grounds of rejection presented above. In addition, the Examiner wishes to note that while amended claims 1 and 18 include require at least two compliance rules be stored, neither of these claims require displaying more than one comment, or determining if more than one condition has been satisfied.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
20. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke Gilligan whose telephone number is (571) 272-6770. The examiner can normally be reached on Monday-Friday 8am-5:30pm.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

12/7/07



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